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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,547	06/24/2003	Kyle Bateman	2280.ACTI.NP	1226
27472	7590	05/19/2006	EXAMINER CHAMBERS, TROY	
RANDALL B. BATEMAN BATEMAN IP LAW GROUP 8 EAST BROADWAY, SUITE 550 PO BOX 1319 SALT LAKE CITY, UT 84110			ART UNIT 3641	
DATE MAILED: 05/19/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,547

Applicant(s)

BATEMAN ET AL.

Examiner

Troy Chambers

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 and 41-53 is/are pending in the application.
- 4a) Of the above claim(s) 8-11, 19, 20, 23-35, 41-49 and 51-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-18, 21, 22, 36, 37, 39 and 50 is/are rejected.
- 7) ☒ Claim(s) 38 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

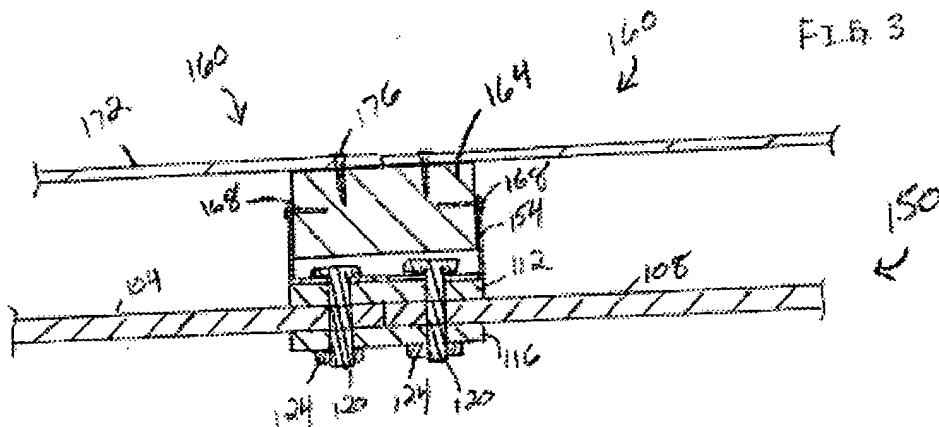
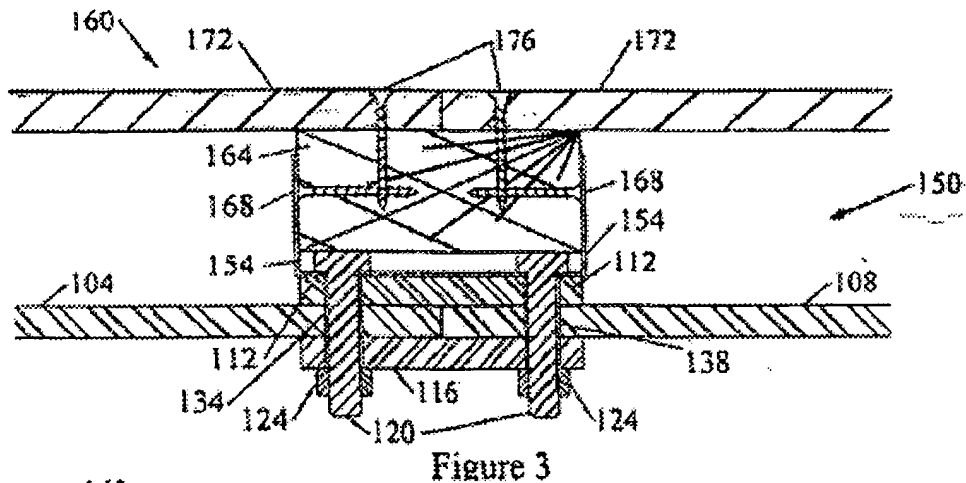
DETAILED ACTION

Response to Amendment

1. The amendment filed 03/20/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Applicant's amendment to the specification that provides a definition of "seam". The offending term has been removed from the claims. This is sufficient. The original specification did not provide a definition for the term "seam" and, therefore, it would be improper to now amend the specification to provide one.

Applicant is required to cancel the new matter in the reply to this Office Action.

2. The Examiner has noticed an inconsistency between the Figure 3 filed with provisional application 60/395540 and the most recent Figure 3 filed in the instant application. As shown below, in the provisional application, the two-by-four 164 is spaced away from the bolts 120 while in the instant application the two-by-four is up against or touching the bolts 120.



Specification

3. The disclosure is objected to because of the following informalities: In paragraph [0069], Figure 3 is disclosed as being prior art. The body of paragraph [0069] makes it clear that applicant is referring to Fig. 3A.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any

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person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, claim 1 requires a metal plate capable of "decelerating" bullets. However, the metal plates are disclosed as stopping bullets. If the bullets are stop then how or in what manner are they also decelerated? Acceleration (or deceleration) due to an outside force is measured by the change in velocity ($V_f - V_o$) divided by the time. When the bullet strikes the front face of the metal plate its velocity is zero ($V_o = 0$). The bullet never reaches the other side of the plate so that velocity is zero as well ($V_f = 0$). For that matter, time is zero as well. As a result, there is no deceleration of the bullet.

7. Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Specifically, claim 1 requires the keyholes in the first plate to be adjacent the keyholes in the second plate. There is no express support in either the drawings or original written specification for such a limitation.

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8. Claims 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the connection between the at least one arm and the rest of the recited elements.

9. Claims 12-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is not clear what is meant or encompassed by the phrase "attachment of the bullet containment frame to the mounting bracket is independent of at least some of the bolts used to clamp the facing strip." The specification does not appear to provide any guidance as to what the above phrase means. What does it mean to be "independent of"?

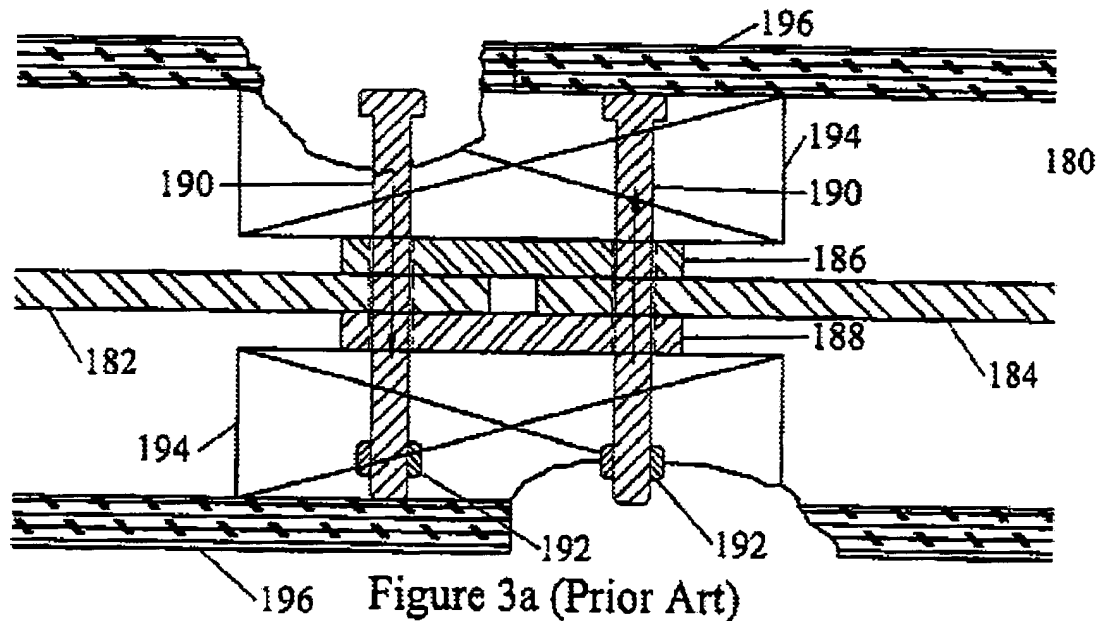
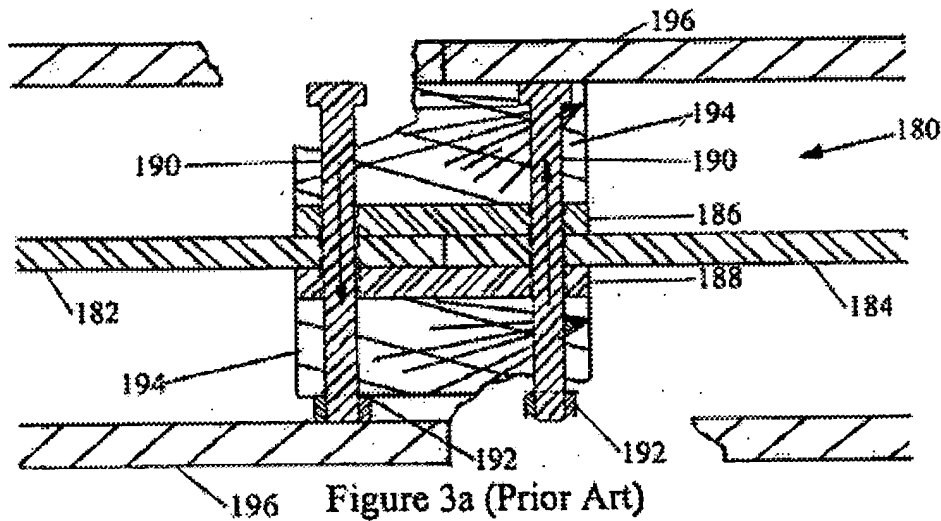
10. Claim 12 recites the limitation "the bolts used to clamp the facing strip to the at least two pieces of steel plate". There is insufficient antecedent basis for this limitation in the claim. The preceding limitations merely disclose a plurality of nuts and bolts but do not require the clamping functional limitation.

11. The claims will be interpreted as best they can be understood in view of the above rejections under 35 USC 112, first and second paragraphs.

Admitted Prior Art

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The following Figures are considered admitted prior art disclosures:



Applicant submitted both figures as prior art and will be considered so for the duration of prosecution. If used in a rejection, the top prior art figure will be hereinafter known as "Fig. 3a New" while the bottom prior art figure will be known as "Fig. 3a Old".

Claim Interpretation

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An extensive search of the term "keyhole" reveals a definition that describes a hole in which a key is inserted. Applicant's specification does not disclose the use of any keys nor does it provide an explicit definition of what is deemed a keyhole, to the exclusion of other types of holes. Therefore, the term "keyhole" will be interpreted as describing a hole capable of accepting a key. The prior art devices applied herein will be interpreted as having holes ("keyholes") capable of accepting "keys". The bolts that extend there through can be interpreted as keys.

Claim Rejections - 35 USC § 102

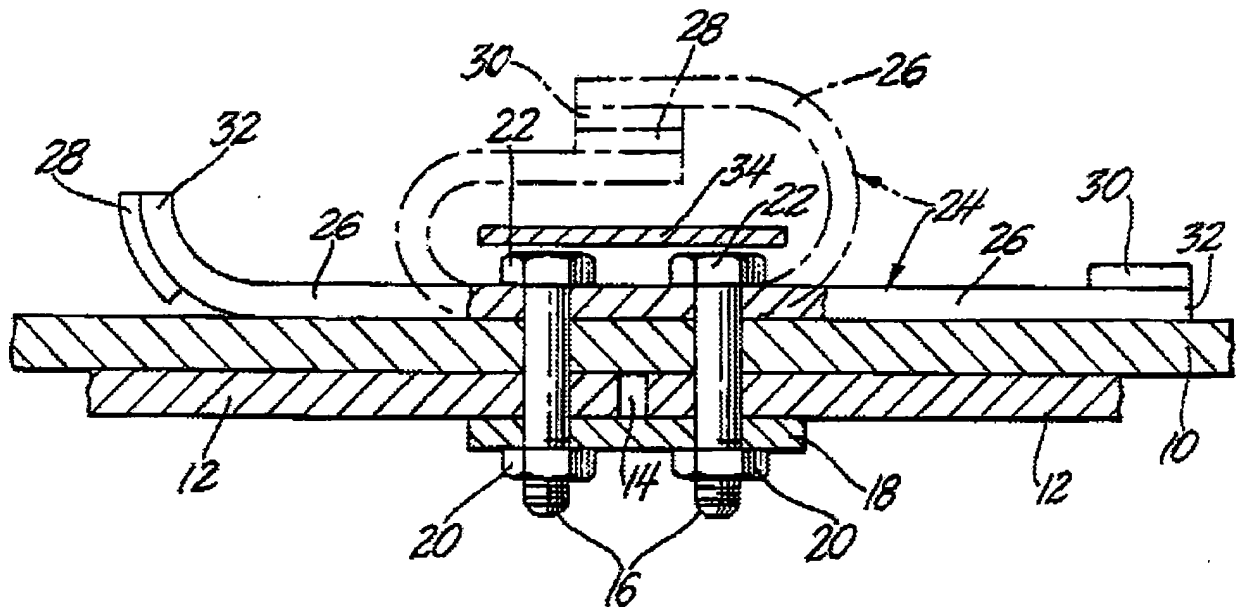
12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

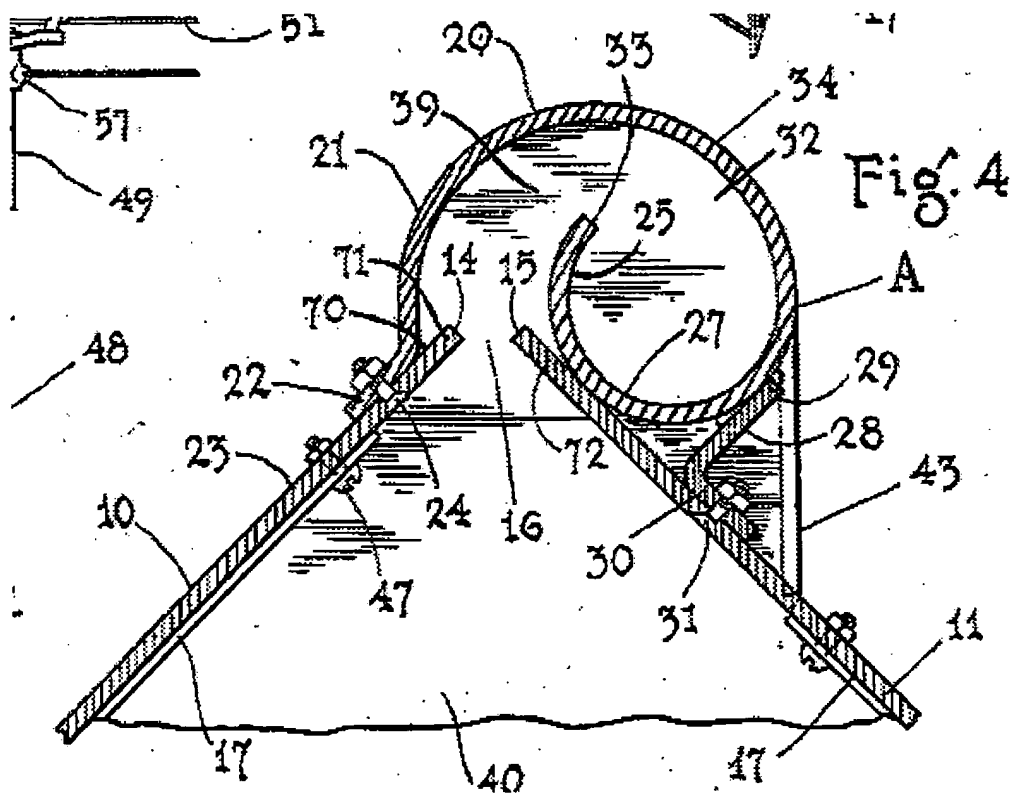
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-3, 12, 17, 18, 21, 22 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5600084 issued to Gonzalez.



14. Gonzalez discloses a modular ballistic wall, comprising:
- a. first and second steel plates (steel shading) 12
 - b. facing strip 14
 - c. a backing strip 34
 - d. an arm/mounting brackets 26
 - e. bullet containment frame 10
 - f. holes (keyholes)
 - g. bolts 16
 - h. nuts 20
15. Claims 1-5, 12, 17, 18, 21, 22, 39 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2013133 issued to Caswell.



16. Caswell discloses a modular ballistic wall, comprising:

- | | | |
|----|----------------------------|------------|
| i. | metal plates | 10, 11 |
| j. | facing strip | 18 |
| k. | bolts/nuts | 47 |
| l. | backing strip | 20 |
| m. | containment frame | 36 |
| n. | mounting bracket | 28 |
| o. | ricochet inhibiting sheets | 48, 65, 66 |

17. Claims 1-3, 21, 36, 37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Prior Art Fig. 3a Old. Figure 3a Old discloses a modular ballistic wall having first and second plates, keyholes (see interpretation of keyhole), facing/backing strip and a plurality of bolts and nuts. Figure 3a Old

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also discloses a containment frame comprising a wood post. With respect to claim 21, at least one arm (bolt arm) extends away from the pieces of plate steel. With respect to claim 36, the wood post completely covers an attachment mechanism (nuts and bolts) when viewed in a direction perpendicular to the wall. With respect to claim 39, it does not appear that bolt 190 extends all the way through containment frame 194.

Allowable Subject Matter

18. Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited on form PTO-892 are cited as of interest to show similar modular ballistic walls.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6873.

Troy Chambers
Primary Examiner
Art Unit 3641

TC
25 March 2006

